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DEFENDANT'S OBJECTION TO STATE'S DEMAND FOR NOTICE OF ALIBI

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4. Counts one and two occurred on or about August 15, 1996, at # 3

Blackberry Road, Nashville, TN. Count three occurred on or about September 17, 1996, at Blackberry Road, Nashville, TN. [Boldface in original.]

The Defendant contends that the above designation of time fails to comport with the requirements of Tenn.R.Crim.P. 12.1(a), which requires “written demand of the district attorney general stating the time, date, and place at which the alleged offense was committed”.

The Committee Comment to Rule 12.1 notes that this rule conforms to the federal rule. Federal cases are therefore instructive as to the proper interpretation of the rule. *See, e.g., State v. Waller*, 118 S.W.3d 368, 372 (Tenn. 2003); *State v. Walker*, 29 S.W.3d 885, 890 (Tenn.Crim.App. 1999).

Rule 12.1 was promulgated to avoid the possibility of unfair surprise on the part of the Government and cause undue delay in the trial because of an unexpected presentation of an alibi defense by the defendant. *United States v. Bickman*, 491 F.Supp. 277, 279 (E.D. Pa. 1980). To invoke Rule 12.1, the prosecution must file a demand which states “the time, date, and place at which the alleged offense was committed.” *United States v. Vela*, 673 F.2d 86, 88 (5th Cir. 1982). The Advisory Committee Note to Federal Rule 12.1 notes that the Defendant need not specify the details of his alibi defense until the government specifies the time, place, and date of alleged offense.

The United States District Court in *Bickman*, *supra*, opined:

“ . . . [T]he Rule is not available as a device to be used for purposes of broad

discovery or to require a defendant to respond to alibi demands for time, place and date that are unnecessarily vague. The only fair reading that can be subscribed to the Rule is that it was intended to be reciprocal in the sense that, while the defendant must respond to the Government's demand by stating 'the specific place or places at which the defendant claims to have been at the time of the alleged offense . . .' (emphasis supplied), the Government must also initially state with specificity the 'time, date and place at which the alleged offense was committed. . .'"

491 F.Supp. at 279.

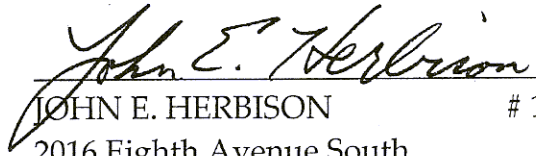
The prosecutor's use of the amorphous phrase "on or about" August 15, 1996/September 17, 1996 renders the purported demand for notice too broad and/or too vague. Defense counsel cannot determine the time frame as to which the State inquires. Is Mr. March being asked to account for his whereabouts on August 14, 1996? What about September 18, 1996? Is he being asked about his movements from place to place during every minute of every hour of August 15 and of September 17?

It is relevant that the government may seek notice of alibi with regard to discrete temporal aspect(s) of the alleged offenses, at least where the prosecution makes it clear it is invoking the rule in that manner. *See, United States v. Vela, supra*, 673 F.2d at 88–89. That procedure would avoid use of Rule 12.1 as a device to procure discovery from the accused in a manner broader than the Rules of Criminal Procedure contemplate.

Where the government is able to furnish a more specific timetable than that specified in its demand for notice of alibi, a trial court should require the government to do so.

Compare, United States v. Bickman, supra, 491 F.Supp. at 279.¹ The Defendant accordingly requests that the Court hold an evidentiary hearing on this objection in order to develop an evidentiary record on the State's ability or inability to more specifically identify the time frame for which the State may demand notice of alibi consistent with Tenn.R.Crim.P. 12.1.

Respectfully submitted,


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¹In *Bickman* the defendant was not required to answer demands for notice of alibi for time periods amounting to 10 ½ and 11 ½ hours. The trial court observed that "the offensive actions of April 14, 1975, appear on the present record to be more limited in descriptive time and should be specified with greater particularity so as to more fairly notify the defendant of the times at which the alleged offenses were to have taken place. This is especially true when the Government has admitted that two of its witnesses observed the offensive acts being committed on that day." *Id.*, at 279.

CERTIFICATE OF SERVICE

I certify that a correct and complete copy of the foregoing has been hand-delivered or mailed, first class postage prepaid, to the Office of the District Attorney General, 222 Second Avenue North, Nashville, Tennessee 37201, this 8TH day of September, 2005.


JOHN E. HERBISON